

§ 213.30

22 CFR Ch. II (4–1–04 Edition)

Justice, for approval. If prior to referral to DOJ, USAID determines that a debt is plainly erroneous or clearly without legal merit, the agency may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence. The CFO may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension.

§ 213.30 Standards for suspension.

(a) The CFO may suspend collection action on a debt when:

- (1) The debtor cannot be located;
- (2) The debtor's financial condition is expected to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, the CFO may suspend collection activity on a debt when the debtor's future prospects justify retention of the claim for periodic review, and:

- (1) The applicable statute of limitations has not expired; or
- (2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or
- (3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) The CFO will suspend collection activity during the time required for waiver consideration or administrative review prior to agency collection of a debt if the statute under which the request is sought prohibits USAID from collecting the debt during that time. The CFO will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail.

(d) The CFO may suspend collection activities on debts of \$100,000 or less during the pendency of a permissive waiver or administrative review when

there is no statutory requirement where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) The CFO will decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

§ 213.31 Termination—general.

The CFO may terminate collection actions including accrued interest, penalty and administrative costs, where the debt principal does not exceed \$100,000. If the debt exceeds \$100,000, USAID obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of \$100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 213.32 Standards for termination.

A debt may be terminated where the CFO determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The evidence necessary to prove the claim cannot be produced or the

Agency for International Development

necessary witnesses are unavailable and efforts to induce voluntary payment have failed; or

(f) The debt against the debtor has been discharged in bankruptcy.

§ 213.33 Permitted actions after termination of collection activity.

Termination of collection activity ceases active collection of the debt. Termination does not preclude the agency from retaining a record of the account for purposes of:

(a) Selling the debt if the CFO determines that such sale is in the best interests of USAID;

(b) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(c) Offsetting against future income or assets not available at the time of termination of collection activity; or

(d) Screening future applicants for prior indebtedness.

§ 213.34 Debts that have been discharged in bankruptcy.

USAID generally terminates collection activity on a debt that has been discharged in bankruptcy regardless of the amount. USAID may continue collection activity, however, subject to the provisions of the Bankruptcy Code for any payments provided under a plan of reorganization. The CFO will seek legal advice by the General Counsel's office if he believes that any claims or offsets may have survived the discharge of a debtor.

Subpart F—Discharge of Indebtedness and Reporting Requirements

§ 213.35 Discharging indebtedness—general.

Before discharging a delinquent debt (also referred to as a close out of the debt), USAID will make a determination that collection action is no longer warranted and request that litigation counsel release any liens of record securing the debt. Discharge of indebtedness is distinct from termination or suspension of collection activity and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt

§ 213.38

remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in this part. When a debt is discharged in full or in part, further collection action is prohibited and USAID must terminate debt collection action.

§ 213.36 Reporting to IRS.

Upon discharge of an indebtedness, USAID will report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. USAID may request FMS to file such a discharge report to the IRS on the agency's behalf.

Subpart G—Referrals to the Department of Justice

§ 213.37 Referrals to the Department of Justice.

(a) The CFO, through the FMS cross-servicing agreement and by direct action, refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor. Unless otherwise provided by DOJ regulations or procedures, USAID refers for litigation debts of more than \$2,500 but less than \$1,000,000 to the Department of Justice's Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts of over \$1,000,000 shall be referred to the Civil Division at the Department of Justice.

(b) The CFO will clearly indicate on the CCLR the actions the DOJ should take on the referred claim.

Subpart H—Mandatory Transfer of Delinquent Debt to Financial Management Service (FMS) of the Department of Treasury

§ 213.38 Mandatory transfer of debts to FMS—general.

(a) USAID's procedures call for transfer of legally enforceable debt to FMS 90 days after the Bill for Collection or